90-1616

Supreme Court, U.S.
FILED
APR 5 1991
OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

STATE OF OHIO,
Petitioner,

v.

LARRY WILLIAMS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

SUPPLEMENTAL APPENDIX

Alan R. Mayberry
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402
(419) 354-9250

Attorney for Petitioner

These pages are substituted for pages 35-47
in the Appendix to the Petition.

Fostoria Municipal Court
213 S. Main St.
Fostoria, OH 44830

State of Ohio
vs.
Larry E. Williams
3094 Baird Rd.
Fostoria, Perry Twp., Wood Co., Ohio 44830
brown brick house, large burgundy or red
colored barn and several outbuildings
(Brief description of Person/Place)

Wood County, Ohio
To: Dep. Rex Russell, Wood County Sheriff's Office
(or any law enforcement officer with authority)

SEARCH WARRANT

From affidavit(s) sworn before the judge of a court of record, I, as judge of this court of record, find the grounds exist (probable cause) for issuing this warrant.

YOU ARE COMMANDED TO SEARCH the Person/Place and seize the Property, described below. Your search shall be within the territorial jurisdiction of this court,within three days (excluding the date this warrant is issued, Saturday, Sunday, and any legal holiday), and (X one): only in the daytime (7:00 a.m.to 8:00 p.m.). at anytime of day or night. Promptly return this warrant, together with a written inventory of any property taken (X one): to the undersigned judge. to (judge's name and court's name and location)

Property to be searched for and seized (description):
Marijuana plants, growing paraphernalia, and any equipment relative to the cultivation, manufacture, or engagement in any part of the production of any controlled substance.

Person/Place to be searched (description):
Entire property of Larry E. Williams.
Marijuana plants, growing paraphernalia, and any equipment relative to the cultivation, manufacture, or engagement in any part of the production of any controlled substance.
Which includes: the entire house and basement, the barn and all outbuildings or structures, the vehicles on the premises, and the entire curtilage.

twp. of Perry, Wood County, Ohio
1/15/88 at _____

_____
Judge (signature)

Fostoria Municipal Court
213 S. Main St.
Fostoria, OH 44830

State of Ohio
vs.
Larry E. Williams
3094 Baird Rd.
Fostoria, Perry Twp., Wood Co., Ohio 44830
brown brick house, large burgundy or red
colored barn and several outbuildings
(Brief description of Person/Place)

No. 88 CR-N SW-3
AFFIDAVIT
(For Search Warrant)

Wood County, Ohio
Dep. Rex Russel, Wood County Sheriff Office,
affiant, states these facts and circumstances:

(1) [Property-Provision of law violation relationship.] The Property to be searched for and seized is involved with the Provision of law violation.

(2) [Property-Person/Place relationship.] The Property to be searched for and seized will be found on/at the Person/Place to be searched.

(3) [Nighttime search authority (if applicable).] There is reasonable cause for permission to search in the nighttime, as well as the daytime.

Provision of law violation (description - code, section number, name of offense): § 2925.03, cultivation, manufacture or engagement in any part of the production of a controlled substance

Property to be searched for and seized (description):
Marijuana plants, growing paraphernalia, and any equipment relative to the cultivation, manufacture, or engagement in any part of the production of any controlled substance.

Person/Place to be searched (description):
Entire property of Larry E. Williams.
Marijuana plants, growing paraphernalia, and any equipment relative to the cultivation, manufacture, or engagement in any part of the production of a controlled substance.
Which includes: the entire house and basement, the barn and all outbuildings or structures, the vehicles on the premises, and the entire curtilage

twp. of Perry, Wood County, Ohio

Probable cause for search (facts and circumstances, stated here or in an attached exhibit):
I, Dep. Rex Russell, affirm that I am Deputy Sheriff with the Wood Co. Sheriff's Office, with 15 years' experience in law enforcement. I have an associate degree in law enforcement technology and will receive a B.A. in Dec., 1988 in criminal justice from BGSU. I have executed numerous search warrants relative to drug trafficking, most which resulted in indictment and/or conviction.

(A) The affiant has a reliable, confidential informant, who must remain confidential, since exposure of his identity would endanger his well-being. Said informant has on prior occasions given the affiant drug information that has resulted in two felony drug charges that will be presented to the Wood Co. Grand Jury next week. Said informant has also on past occasions provided information to Ptlm. Mike Clark, Fostoria Police Dept., which has proven to be accurate. (See Affidavit A) The basis of the informant's knowledge is his first-hand, personal observation of 50-60 marijuana plants being grown by Larry E. Williams at the address given, within the past four weeks.

(B) The affiant has a second confidential informant who is anonymous and whose information is very fresh. Said second informant relates that an observation was made, within the last three days at the Williams property, that there are a large number of marijuana plants being grown in the house and on the curtilage of the above described premises. See attached Affidavit B, a sworn statement of Tim Hatfield, police dispatcher, who took several calls from said informant.

(C) The said Larry E. Williams, DOB 9-2-53, owner and/or occupier of the premises, has one prior drug arrest and has been convicted of a felony drug charge, trafficking in

marijuana, and was sentenced to 1-5 years' imprisonment on 12-16-82. See attached Affidavit C, a teletype report from Fremont Police Department.

Permission for nighttime search (from 8:00 p.m. to 7:00 a.m.) is not requested

Incorporated into this affidavit are the following (X if applicable)

X Other: sworn affidavits from Tim Hatfield, police dispatcher; Ptlm. Mike Clark, Fostoria Police Dept., and teletype report showing prior drug trafficking conviction

Sworn to before me,
of a court of record, and
signed in my presence on:
7/15/88 at 2:45 p.m.

Dep. Rex. Russell
Affiant (signature)

William R. McMahon
Judge (signature)

Intentionally left blank.

AFFIDAVIT A

Sworn interview between Deputy Rex Russell asking the question and Patrolman Mike Clark answering.

Q. We have been hearing from the confidential informant, the same confidential informant that has provided information resulting in two felony charges being presented to the Wood County Grand Jury. This confidential informant has also given you, Patrolman Clark of the Fostoria Police Department information and could you tell me if any of the information was useful and would be considered legitimate and if any such information has resulted in convictions?

A. I used the same informant in other cases that has resulted in arrests and convictions.

Q. Has the informant given you information prior to today regarding the Williams subject living at 3094 Baird Road and his cultivating marijuana?

A. Same subject has given me information on the Williams subject about illegal marijuana cultivating.

*Mike Clark*_____
Mike Clark

Sworn to and subscribed before me this 15th day of July, 1988.

*Rex E. Russell*_____
Notary Public
Rex E. Russell
Notary Public, State of Ohio
My Commission Expires
April 2, 1991

AFFIDAVIT B

Sworn interview between Deputy Rex Russell asking questions and Tim Hatfield answering.

Q. Tim, on July 14, 1988, you received two phone calls from an anonymous person regarding drug information. Can you describe the conversation and describe the lady's sincerity and veracity?

A. When I received the call she made it very clear that she wanted to stay anonymous. I would not consider her to be a teenager she was very sincere. She advised me that her son had spent the night at a location on Baird Road the address would be 3094 Baird Road. I questioned her as to the occupants' names and she advised me that Larry or Barry Williams she was very concerned because there was pot growing in the basement and behind the chicken coop. She advised numerous times through the conversation that the Williams fella was either on parole or probation and that she wanted to stay anonymous. I questioned her as to the residence and she advised me that the barn was burgundy or maroon in color and the house is large in size and brown in color. I attempted to get as much information as I possibly could but I was limited because her son was not too far and she did not want him to know that she was calling the police department. She was calling me from a pay phone, I could hear traffic in the background and every question that I asked her she was very sincere in answering them and there was a scared tone in her voice.

Q. Did this lady seem concerned enough about this information to call you back the second time?

A. She called me again later in the afternoon on the 14th of July with more information that she had received from her son. She advised me her son had gone to a bar supposedly in West Milgrove to play pool and while Mr. Williams drank beer. The pool table was at the back of the bar and Mr. Williams' son took the youth to the back of the bar and told him to look out the window where several marijuana plants were also growing. The lady

advised Mr. Williams called the owner of the bar by the name of Pat. Again she refused to disclose her name and expressed concern and advised me if she found out any other information she would get back with me.

Q. You have literally received thousands of phone calls in your career, do you consider this lady a sincere and concerned informant?

A. Yes, I honestly do.

Tim Hatfield
Tim Hatfield

Sworn to and subscribed before me this 15th day of July, 1988.

Rex E. Russell
Notary Public
Rex E. Russell
Notary Public State of Ohio
My Commission Expires
April 2, 1991

SEARCH WARRANT

RETURN OF SEARCH WARRANT

On 7/15/88, I received this warrant, and (complete A or B):

A. Warrant served. On 7/16/88 at 11:00 a.m., I executed this warrant at the place or upon the person named therein. Thereafter (X one):

Person present. I gave a copy of this search warrant to *Larry E. Williams*, the person searched or at whose place the search was made.

7/18/88 Wood County Sheriff W25 *Dep. Rex Russell*
(signature)

INSTRUCTIONS
(to officer executing search warrant)

"Legal holiday" is defined in R.C. 1.14; but see also R.C. 124.18 and E.C. 124.19

The Knock and Announce Statute (R.C. 2934.12) provides in substance that before you can break down an outer or inner door or window of the place to be searched, you must take these steps. (1) Knock (at the door or window). (2) Announce your identity. Example: "We're police officers." (3) Announce your authority. example: "We have a search warrant . . ." (4) Announce your purpose. Example: " . . . to search this building." (5) Announce your demand. Example "Open the door." (6) Receive a refusal or, after a reasonable time, no response.